

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

REGIONAL HEARING  
CLERK  
2014 APR 17 AM 11:51

U.S. Environmental  
Protection Agency-Reg 2

IN THE MATTER OF:

Virgin Islands Asphalt Products Corp  
13H Estate Bethlehem  
PO Box 1549, Kingshill  
St. Croix, US Virgin Islands 00841-1549  
Respondent

Proceeding Pursuant to 311(b)(6) of the Clean Water  
Act, 33 U.S.C. 1321(b)(6).

CWA SECTION 311 CLASS II

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
CWA-02-2013-3802

**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT**

Complainant, the United States Environmental Protection Agency ("EPA"), issued the Complaint referenced herein on April 12, 2014, against Virgin Islands Asphalt Products Corp and EDA Trust as Respondents, located at 13H Estate Bethlehem, PO Box 1549, Kingshill, St. Croix, US Virgin Islands 00841-1549.

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO") without further litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

**II. Procedural and Factual Background**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 311(b)(6) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1321(b)(6).
2. The Complaint alleges that Respondents failed to prepare an adequate Facility Response Plan ("FRP") and include all the elements of an emergency response plan for its South Shore

location at Plot 3A, Lime Tree Bay, St. Croix, USVI 00841 ("the Facility" or "the premises"), as required by 40 C.F.R. § 112.20(h)(1-10), in violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j), and proposed to assess a civil penalty of ninety-six thousand and eight hundred dollars (\$96,800).

3. Since the issuance of the Complaint, Virgin Islands Asphalt Products Corp's duly authorized representatives have demonstrated that EDA Trust is a family trust that owns the property on which the facility is located, but is not responsible for the day-to-day operations of the facility. Complainant has therefore found that the subject of this action is Virgin Islands Asphalt Products Corp ("Respondent") only.
4. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Complaint, and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Agreement.
6. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision set forth in this Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

### **III. Terms of Settlement**

7. Pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), the nature of the violations, Respondent's subsequent efforts to come into compliance with the Act and the FRP regulations, the results of an ability to pay analysis, and other relevant factors, EPA has determined that **eighteen thousand dollars (\$18,000)** is an appropriate civil penalty to settle this action.
8. Respondent consents to the issuance of this CA/FO, and agrees, for the purposes of settlement, to pay the civil penalty cited in the foregoing paragraph, and to maintain compliance with all applicable requirements of Section 311(j) of the Act and the regulations at 40 C.F.R. Part 112.

### **Payment Terms**

9. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of \$18,000, payable to the "Treasurer of the United States of America" in accordance with the following payment information and schedule:



- a. Due and owing forty-five (45) days after the Final Order is signed by the Regional Judicial Officer [or Director of the Emergency Response and Remedial Division], of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for nine thousand dollars (\$9,000);
- b. Due and owing one hundred thirty-five (135) days after the Final Order is signed by the Regional Judicial Officer [or Director of the Emergency Response and Remedial Division], of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for three thousand dollars (\$3,000);
- c. Due and owing two hundred twenty-five (225) days after the Final Order is signed by the Regional Judicial Officer [or Director of the Emergency Response and Remedial Division], of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for three thousand dollars (\$3,000); and
- d. Due and owing three hundred fifteen (315) days after the Final Order is signed by the Regional Judicial Officer [or Director of the Emergency Response and Remedial Division], of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for three thousand dollars (\$3,000);

The check(s) submitted for payment shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check(s) shall be mailed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall also timely mail copies of each payment to both of the following:

Melva J. Hayden, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

And

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

10. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
11. If any required payment is not received on or before the applicable due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of any applicable due date.

In addition, pursuant to Section 311(b)(6)(H) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(H), if any payment is not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

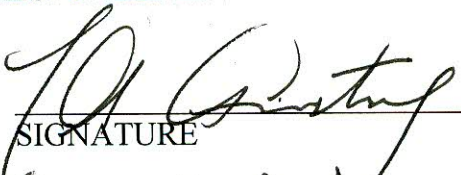
12. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.
13. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
14. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i), for the violations alleged in the Complaint. Nothing in this Agreement is intended to be, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
15. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented, to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.



16. This Agreement shall apply to, and be binding upon, Respondent, its officers, directors, agents, servants, employees, successors, and assigns, including, but not limited to, subsequent purchasers.
17. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Agreement.
18. Respondent consents to service upon it by delivery of a copy of this Agreement by an EPA employee other than the Regional Hearing Clerk.

FOR RESPONDENT:

BY:

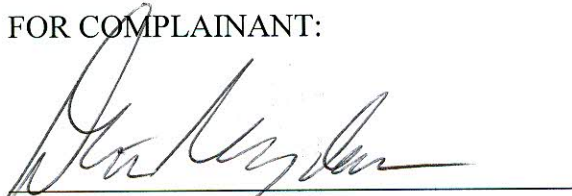
  
SIGNATURE

March 31, 2014  
DATE

Elizabeth A. ARMSTRONG  
NAME (Please print)

President  
TITLE (Please print)

FOR COMPLAINANT:

  
WALTER MUGDAN

April 11, 2014  
DATE

Director, Emergency and Remedial Response Division  
United States Environmental Protection Agency- Region 2  
290 Broadway  
New York, New York 10007-1866

#### IV. Final Order

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

*He Ferrara*

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HELEN FERRARA

Regional Judicial Officer

United States Environmental Protection Agency - Region 2

290 Broadway, 16<sup>th</sup> Floor

New York, NY 10007-1866

*4/15/14*

\_\_\_\_\_  
DATE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the addressees listed below:

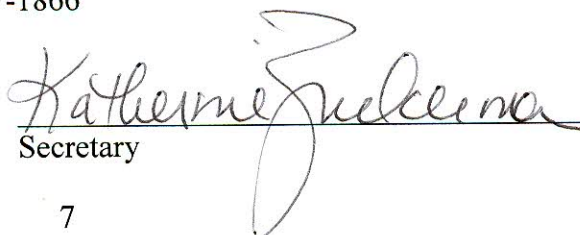
Elizabeth Armstrong  
President  
Virgin Islands Asphalt Products Corp  
13H Estate Bethlehem  
PO Box 1549, Kingshill  
St. Croix, US Virgin Islands 00841-1549

Jeffrey A. Sepesi, Esq.  
Law Office of Jeffrey A. Sepesi  
8389 Seneca Pointe  
Eden Prairie, MN 55347

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

4/17/2014  
Date

  
Secretary